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DACA's fate in court's hands - HoustonChronicle.com

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## DACA's fate in court's hands

Texas-led case is latest battle over immigration

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Hardin-Jefferson High School Spanish teacher Ana Rocha, left, interacts with Breanna Kelley, during a language exercise. Since Rocha, 26, qualified for President Barack Obama's temporary work ...

Photo: Marie D. De Jesus, Staff

A near straight-A student her entire life, Ana Rocha felt utterly stranded when she graduated from college in 2012. She was waiting tables at a Japanese restaurant in Beaumont, relying on friends for rides because she lacked a driver's license and wondering what to do next.

Today, as the Spanish language department head at Hardin-Jefferson High School, she earns three times as much and has health insurance. For the first time since her parents brought her illegally across the Mexican border when she was 5, Rocha isn't afraid of police. She has a driver's license, a car and a calling.

"Teaching is my life. I couldn't fathom what I would do without it," the 26-year-old said. "I just love giving people the ability to go out and help themselves."

She'd likely still be slinging some under-the-table cash job without the provisional work permit she received under President Barack Obama's signature 2012 immigration policy for youth here illegally. Today about 713,300 youth have qualified for the permits, and experts say it's lifted their earnings and enabled more to obtain health insurance and higher education.

It's a stark contrast to the fate of Obama's follow-up initiative in 2014, which he aimed at a larger pool of young adults and certain parents of Americans who are here illegally. That program has been on hold since then-Texas Attorney General Greg Abbott led 26 mostly Republican states in challenging it. The Supreme Court on Monday will hear the matter, one of its most significant this term, and a decision could be the most important related to immigration in decades. At stake is the extent of power the executive branch can wield and the fate of about 4 million immigrants potentially eligible for the program, most of whom have lived here illegally for more than 10 years.

It's put Texas in the peculiar position of arguing against an initiative that essentially already exists and that as a policy once held bipartisan support. If the state prevails, it could signal the end of Obama's original youth permit program too. It all underscores how far the pendulum against immigration reform has swung since President George W. Bush pushed a comprehensive overhaul nearly a decade ago.

## ***John Lennon's case***

Texas Attorney General Ken Paxton said the state's lawsuit is not about immigration per se but whether the president has the authority to make a sweeping policy change that Texas argues is at odds with Obama's obligation to enforce immigration law.

"This is fundamentally about the constitution and the future of this country, not just about immigration law or a Democratic president but about what can a president, no matter what his or her philosophy is, do," Paxton said. "Do they have the ability now under the constitution to make law and step into the role Congress traditionally had?"

The Obama administration argues that it's not in fact making new law, but prioritizing whom it should deport as mandated by Congress itself. Legislators allocate about \$6 billion a year to enforce immigration, enough to deport roughly 300,000 immigrants, a fraction of the 11 million in the country illegally, Justice Department lawyers said in their brief filed last month with the Supreme Court.

At issue in both programs - deferred action for childhood arrivals, known as DACA, and deferred action for the parents of Americans, or DAPA - is a practice the government has employed as far back as the 1960s. But it was first publicly revealed when the Nixon White House tried to deport Beatles frontman John Lennon in 1972.

Lennon and Yoko Ono were playing spirited antiwar rallies during the height of the nation's opposition to the Vietnam War. The government said the Brit had entered the country improperly since he'd pleaded guilty to having cannabis resin in London and at the time U.S. law banned visitors with a drug conviction.

Lennon's lawyers discovered the government's policy of deferred action, in which it can temporarily delay deportation if there's a compelling reason for the person to stay. Factors it weighs include whether the immigrant is very young or old, how long they have been here, if deporting them would harm their relatives in the U.S., and what contributions they have made to society.

Lennon was allowed to remain, and today the policy is considered the legal underpinning for Obama's 2012 and 2014 immigration programs. The earlier initiative benefits children who came here illegally when they were very young. The latter executive order is partly for immigrants who have been in the U.S. illegally for years without committing serious crimes and have children who are legal residents. Advocates argue these groups of people would be sympathetic candidates for deferred action.

"That's why some believe this is on good legal footing," said Muzaffar Chishti, director of the New York office for the Migration Policy Institute, a think tank in Washington D.C.

As with Obama's programs, recipients of deferred action are granted temporary work permits, Chishti said, noting the government logic is, "once we've decided not to immediately deport you, it's stupid for us not to let you work in the country legally otherwise you become a public charge."

## ***Large classes of people***



Texas doesn't dispute the administration's right to grant deferred action. But it contends the president's programs allow a mass group of immigrants to apply, who are almost all approved. Typically deferral is granted on a case-by-case basis for people already in deportation proceedings. The state argues the initiatives improperly grant immigrants a "lawful presence," while the administration contends the permits can be repealed at any time and their recipients deported.

In its brief, the government said more than 20 such policies for large classes of people have been enacted since the 1960s, including for Cubans after the island's revolution and more than 1.5 million spouses and children of immigrants who were granted residency under President Ronald Reagan's 1986 reforms. It also cites its 2012 youth program, which is similar in scope, but was not challenged by Texas.

Paxton said he didn't know why the state didn't argue the constitutionality of DACA.

It's an interesting exclusion, given that the legal arguments for both DACA and its 2014 spin-off for parents, DAPA, are basically identical, said Stephen Legomsky, a law professor at Washington University and former chief counsel to U.S. Citizenship and Immigration Services.

"It's hard for me to think of any ground striking DAPA that wouldn't apply to DACA," he said. "So why not challenge DACA? They might have worried the court wouldn't want to strike down such a popular program. So they think go after DAPA and if they win, then they have a nice precedent to go after DACA."

Though the Republican presidential frontrunners have pledged to repeal the youth program if they take office, its impact has largely been regarded a success.

## ***Life 'demonized'***

Mark Krikorian, executive director of the Center for Immigration Studies, a Washington D.C., group pushing for reduced immigration, said young adults are a "politically more appealing group of illegal aliens."

"There's a good policy case to be made for amnesty for illegal immigrants who came at very young ages, before 10 or before 7," he said. "But that's a policy question that's a matter for Congress to decide."

Congress has struggled with the issue since 2001. Though politicians on both side of the aisle favored granting certain youth legal status, the proposal fell apart each time Democrats pushed

to include a wider pool of immigrants.

Advocates say the success of the 2012 youth program speaks for itself: About 70 percent of its recipients obtained a job with better pay and saw a wage increase of 45 percent, according to a 2015 survey by the Center for American Progress and the National Immigration Law Center, two advocacy groups in Washington D.C. Texas is home to the most recipients in the nation after California and nearly 115,000 have permits.

One of those benefitting from the program is Alejandra Villasenor, who at 21 is interning for the Houston branch of the prestigious accounting firm PricewaterhouseCoopers. As an accountant on the federal tax team, she makes nearly \$4,000 a month. The University of Houston senior was 8 when her mother brought her here from Mexico to join her dad who was working at a body shop.

"If I lost DACA I would lose everything I worked really hard for," Villasenor said. "It sucks to have your whole life be demonized for something you had no control over."

## ***Backlogged system***

In some cases, the program has helped immigrants who were once eligible for legal status but stuck in a severely backlogged system. Karla Pérez, a 23-year-old law student at the University of Houston, was 2 when her parents brought her here from Mexico City.

They have been waiting more than 20 years to receive green cards through Pérez's grandfather, who is an American citizen. But only 23,400 are available in this category every year and for countries like Mexico where a large number of relatives apply, the wait time is about 22 years. Because Pérez is now older than 21, she is no longer eligible for residency through her grandfather.

The law student hopes to become an immigration attorney and said she gets frustrated when people say immigrants should "get in line" to come here legally.

"There's just not a lot of options for most people," she said. "There really is no line to get into."

For Rocha, the teacher, it wasn't until she was in high school that she understood what it meant to be here illegally after her mother explained why she couldn't apply for a driver's permit. She graduated second in her high school class, but had few college opportunities because she wasn't eligible for federal financial aid.

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After receiving her bachelor's degree in Spanish from Lamar University in May 2012, Rocha landed at Tokyo Japanese Steak House. Her college friends were working high-paying jobs in Houston or going to law school.

"They were off pursuing their careers but I was stuck back at home and working at a restaurant," she said. "I didn't really know what was going to happen next."

One month later, Obama announced his youth plan in a speech from the White House Rose Garden.

"It was really one of the happiest days of my life," Rocha said.

She immediately applied for her permit, received her driver's license and was hired at her old high school to teach Spanish. She now oversees the department at Hardin-Jefferson.

"My whole life has changed," she said. "I am so thankful my parents brought me over here but at the end of the day this was not something I chose."

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